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OFFICE OF PETITIONS

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505 9TH STREET, N.W.
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WASHINGTON, DC 20004

In re Application of	:	
Martin Alles, et al.	:	
Application No. 10/586,744	:	ON PETITION
Filed: June 23, 2008	:	
Attorney Docket No. GRA26 029US	:	

This is a decision in response to the petition, filed October 15, 2010, requesting withdrawal of the holding of abandonment in the above-identified application under the provisions of 37 CFR 1.181 (no fee). Alternatively, petitioner requests revival under the provisions of 37 CFR 1.137(a).

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The application became abandoned for a failure to timely reply to the non-final Office action, mailed December 22, 2009. A Notice of Abandonment was mailed on August 2, 2010.

Petitioner asserts that the Office action of December 22, 2009 was not received. In support petitioner submits a copy of the firms docketing records covering the dates of 12/22/09 through 3/22/10, where the Office action would have been entered and docketed for a reply had it been received.

A review of the written record indicates no irregularity in the mailing of the Office action on December 22, 2009, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received.

The showing required to establish non-receipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would

include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar, reminder system, or the individual docket record for the application in question.

The instant petition does not establish non-receipt of the Office action in compliance with the procedures set for at MPEP 711.03(c). Specifically, the petition does not describe the system used for recording an Office action received at the correspondence address of record and there is no statement establishing the reliability of the docketing system. Further, the petition fails to include a statement that a search of the file jacket or equivalent was made and that the application contents thereof indicates that the Office action of December 22, 2009 was not received.

Absent the required evidence to establish non-receipt of the Office action of December 22, 2009, the petition requesting withdrawal of the holding of abandonment cannot be granted. Accordingly, a decision on the alternative petition under the provisions of 37 CFR 1.137(a) follows.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The present petition does not comply with the requirements of 37 CFR 1.137(a). Specifically, the petition lacks items (1) and (3) above.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment or comply with the requirements of 37 CFR 1.137(a), petitioner should consider filing a petition under the provisions of 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An

“unintentional” petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be delivered through one of the following mediums:

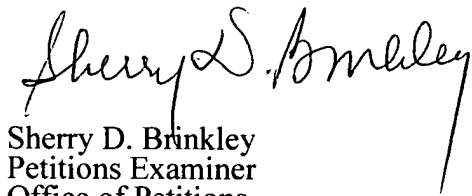
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By fax: (571) 273-8300
 ATTN: Office of Petitions

By Internet: EFS-Web¹

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions

¹ www.uspto.gov/ebs/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)